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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 ALYSSA BALL AND JOHN PRIGNANO;

CASE No. 2:20-cv-00888-JAD-BNW

12 Plaintiffs,

13 vs.

14 SKILLZ INC.,

15 Defendant.

**DECLARATION OF ELLIOTT KAPLAN
IN SUPPORT OF DEFENDANT SKILLZ
INC.'S MOTION TO COMPEL
ARBITRATION AND MOTION TO
DISMISS**

REDACTED FOR PUBLIC FILING

DECLARATION OF ELLIOTT KAPLAN

I, ELLIOTT KAPLAN, declare as follows:

1. I have been employed at Skillz Inc. (“Skillz”) since February 22, 2016. My current position at Skillz, which I have held since December 2019, is Vice President of Customer Advocacy. My responsibilities in that position include overseeing Skillz’ Customer Service team. I also oversee Skillz’ Trust and Safety team, which works to prevent cheating and abuse on Skillz’ gaming platform with the goal of providing the Skillz player community with fair and level competition. Prior to becoming Vice President of Customer Advocacy, I held the position of Director of Customer Service, with similar responsibilities to those I have as Vice President of Customer Advocacy. I became Director of Customer Service when I joined Skillz in February 2016.

2. I submit this declaration in support of Skillz’ motion to dismiss the above-captioned action. I have personal knowledge of the following facts and, if called and sworn in as a witness, could and would competently testify thereto.

3. Skillz is one of the world’s leading mobile games platforms. It hosts numerous online skill-based games, in which players can compete for cash prizes in head-to-head matches or tournament-style play. 21 Blitz is one of the games hosted on Skillz’ platform.

4. In order to play 21 Blitz or other games hosted on Skillz’ platform, a user must establish a Skillz account. A player who wishes to participate in paid entry competitions must save their account by providing an email address for the account and verifying their age via the following screen:

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18 5. As shown above, after entering their date of birth, a user must tap on “Next” in
19 order to save their Skillz account. Below the box labeled “Next” is an advisory stating, “By
20 tapping ‘Next’, I agree to the Terms of Service and the Privacy Policy.” The underlined text in
21 the advisory is a hyperlink, which, when tapped, brings the user to the webpage located at
22 *skillz.com/legal*, on which is posted Skillz’ Terms of Service and Privacy Policy. By reviewing
23 past versions of our platform software, I have confirmed that this has been the case since at least
24 January 1, 2018.
25

1 6. I am aware from my personal participation in the investigation referenced below
2 and review of Skillz correspondence with Prignano and Ball that (i) John Prignano maintained a
3 Skillz account under the username "Prignum42," which was linked to the email address
4 [REDACTED] and, (ii) Alyssa Ball maintained a Skillz account "Lysnico," which was
5 linked to the email address [REDACTED] Skillz' personnel have communicated with
6 Mr. Prignano and Ms. Ball about their respective Skillz' accounts through these email addresses.
7 Attached as **Exhibits 1 and 2** are examples of such correspondence.
8

9 7. Skillz maintains a database of the dates user accounts are established. By
10 querying that database, I found that the "Prignum42" user account was established on January 8,
11 2018, and the "Lysnico" user account was established on April 25, 2019.

12 8. In order to deposit funds and then participate in paid entry competitions, a user
13 must save their Skillz account. Skillz maintains a database of the financial transactions
14 associated with each Skillz account. By querying that database, I found that the first deposit of
15 funds and first paid entry competition for the Prignum42 account occurred on January 2, 2019.
16 By querying that database, I found that the first deposit of funds and first paid entry competition
17 for the Lysnico account occurred on April 25, 2019. This confirms that these accounts had been
18 saved not later than those dates; as noted above, a user cannot participate in paid entry
19 competition unless their Skillz account has been saved.
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21 9. Attached hereto as **Exhibit 3** is a true and correct copy of Skillz' Terms of
22 Service, as they existed between January 8, 2018 and April 25, 2019. Sections 1.1 and 14 of the
23 Terms of Service relate to arbitration. The Terms of Service were amended on October 10,
24 2019, but Sections 1.1 and 14 were unchanged. A true and correct copy of the Terms of Service,
25 as amended on October 10, 2019, is attached hereto as **Exhibit 4**.
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1 10. As an incentive for players, Skillz maintains a loyalty program through which
2 players can earn “Ticketz” – a form of virtual currency on Skillz’ platform – based on the
3 frequency of their play. Ticketz can be used to redeem prizes. The top prize is a Porsche
4 Boxster.

5 11. In August 2019, Prignano attempted to redeem Ticketz for a Porsche Boxster.
6 Around this time, Skillz received complaints from other Skillz community members about
7 Prignano’s gameplay. Skillz investigated those complaints. In connection with that
8 investigation, Prignano reiterated his agreement to Skillz’ Terms of Service in email
9 correspondence with Skillz. See **Exhibit 5**.

10 12. Prignano satisfied initial tests showing that his playing ability was consistent with
11 his level of skill. However, Skillz received information from other players in the form of text
12 messages indicating that Prignano has been strategically aborting games in order to avoid losses.
13 Skillz has confirmed the existence of such conduct through the use of analytics.

14 13. Skillz also received evidence in the form of text messages suggesting that
15 Prignano had colluded with Ball to manipulate the results of tournament play by throwing games
16 to each other. Skillz has confirmed the existence of such collusion through the use of analytics.

17 14. Skillz’ Terms of Service prohibits cheating, fraud, and abuse. Ball and
18 Prignano’s above-referenced conduct is considered cheating, fraud, and abuse under Skillz’
19 Terms of Service.

20 15. Based on the findings of its investigation, Skillz sent a notice to Prignano on
21 March 13, 2020, notifying him that he has been permanently banned from Skillz’ platform and
22 that his winnings are forfeited and/or subject to recoupment. A copy of that notice is attached
23 hereto as **Exhibit 1**.

